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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP NO 611 OF 2001

Petitioner : Motilal Sahu, aged 65 years
S/o Amoli Sahu, Retired Lineman
Grade II, MPEB Rajnandgaon (CG)
Resident of Near Gurudwara,
Infront of Main Hospital,
Rajnandgaon, Tah & Distt
Rajnandgaon (CG)

Versus

Respondents: (i) Chhattisgarh Electricity Board
Dangania, Raipur (CG)

(ii) Superintending Engineer,
Chhattisgarh Electricity Board,
Rajnandgao

S B : Hon'ble Shri **Justice Satish Kumar Agnihotri,** J.

Shri Ajay Shrivastava, counsel for the petitioner.
Shri PKC Tiwari, Senior counsel with Shri Avinash K Mishra, counsel for the respondents.

ORAL ORDER

(4th January, 2006)

This petition has been filed under article 226, 227 of the Constitution of India challenging legality of the order dated 29.01.1996 (Annexure P/4) whereby the date of retirement of the petitioner has been changed to the retrospective date from 01.01.1994 to 30.06.1988.

2) The facts in nutshell and relevant for the purpose of this petition are that the petitioner was appointed as Lineman Grade-II by

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the Superintendent Engineer, MPEB, Rajnandgaon and continued to work as Lineman Grade-II till by order dated 01.01.1994 (Annexure P/1), he was retired from services w.e.f.01.01.1994 on attaining the age of superannuation. The respondents by order dated 29.01.1996 cancelled the order dated 01.01.1994 whereby the petitioner was directed to retire w.e.f.01.01.1994. It was ordered that the petitioner ought to have retired w.e.f.30.06.1988 on attaining the age of superannuation of 58 years.

3) Subsequently, by order dated 05.02.1996 (Annexure P/3), respondents treated period of service of the petitioner from 01.07.1988 to 31.12.1993 as re-appointment and the petitioner was granted basic pay scale as payable on 30.06.1988 and allowances minus payable pension. Accordingly, respondents calculated excess payment of Rs.87,755/- (Rupees eighty seven thousand, seven hundred fifty five) as recoverable, due to excess working period of 5 years six months. After adjusting gratuity, exgratia and pension amount of Rs.59,779/- (Rupees fifty nine thousand, seven hundred seventy nine), balance amount of Rs.27,755/- (Rupees twenty seven thousand, seven hundred fifty five) was directed to be recovered @ Rs.600/- (Rupees six hundred) per month from the pension of the petitioner by order dated 09.12.1997 (Annexure R-6).

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4) Shri Ajay Shrivastava, learned counsel appearing for the petitioner submits that the orders dated 29.01.1996, 05.02.1996 and letter dated 09.12.1997 are bad and unlawful on the following grounds:-

i) That the petitioner has retired w.e.f.01.01.1994 by order dated 01.01.1994 passed by the respondents, not on account of any mis-representation made by the petitioner. The petitioner was allowed to work from 01.07.1988 to 31.12.1993 and has been paid salary inclusive of increments, allowances etc. Order of the respondents to change date of retirement and to recover excess amount on the basis of treating the period from 30.06.1988 to 31.12.93 as re-appointment is unfair, un-reasonable and illegal; and

ii) The above stated orders (supra) passed by the respondents involve civil consequences and as such, the same could not have been passed without putting the petitioner on notice. This amounts to flagrant violation of principles of natural justice.

Learned counsel for the petitioner submits that the above stated orders dated 29.01.1996, 05.02.1996 & 09.12.1997 be quashed and respondents be directed to make payment of the deducted amount from the pension with interest.

5) Shri PKC Tiwari, learned Senior counsel with Shri Avinash K Mishra, learned counsel appearing for the respondents, submits that by mistake, the petitioner, who is Motilal Sahu S/o Shri Amoli Sahu was allowed to work till 31.12.1993. Actually this order dated 01.01.1994 was meant to be passed in case of other employee, namely Shri Motilal S/o Shri Amarnath. Learned counsel further

contends that keeping in view the age and the date of birth, which have not been disputed by the petitioner, the petitioner has worked even after attaining the age of superannuation; and as such the petitioner was wrongly allowed to work and to obtain the same salary what he was getting prior to his retirement on superannuation.

6) Learned counsel for the respondents further submits that the respondents have taken decision on humanitarian ground to treat the period as re-appointment, so that the petitioner could not be deprived of his salary for the work, he had done in the office. The petitioner is not entitled to his full salary but only last pay drawn as on 30.06.1988 with allowances minus pension admissible and payable to him.

7) I have heard learned counsel for the parties and perused the records appended to the petition as well as the return filed by the respondents. It is evident that Annexure P/1 order dated 01.01.1994 clearly mentions the name of the present petitioner as Shri Motilal Sahu S/o Shri Amoli Sahu. Further orders, which were passed on 29.01.1996, 05.02.1996 and 09.12.1997 state the same name i.e. Shri Motilal Sahu S/o Shri Amoli Sahu, name of the petitioner. Contention of the respondents is that this order was meant for other employee namely Motilal S/o Amarnath is not sustainable and deserves to be rejected.

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8) It appears that other employee, namely, Shri Motilal S/o Amarnath has accepted his retirement w.e.f.01.07.1988 and was granted his pensionery benefits accordingly. The petitioner has worked and was ordered to retire from his services w.e.f.01.01.1994 and as such, the petitioner cannot be denied payment of his salary, which had already been paid to him.

9) Subsequently, by order dated 29.01.1996 and 05.02.1996, the Officers of the respondents woke up from long slumber after a period of 8 years to pass such an order that the age of retirement be changed with retrospective effect from 01.01.1994 to 30.06.1988.

10) The Supreme Court in the case of ***Kailash Singh Vs State of Bihar and others*** (2005 AIR SCW 3273) has held as under :

> *"6. So far as post-retiral benefits are concerned it is submitted that they may not be admissible to him. We fail to appreciate the submissions made on behalf of the respondents in the background of the facts indicated in the earlier paragraph. The respondents took work from the appellant without any dispute. He would obviously be entitled to his salary and there is no reason as to why he should be denied the post-retiral benefits. His total service comes to 32 years. We have already adverted to the fact that the medical report has not been placed on the record, nor as to what is meant by the term "average age", has*

been explained to us. In the totality of the facts and the circumstances of this case, we find no good reason to deny those benefits to the appellant."

11) In other decision in the matter of ***Sahib Ram Vs State of Haryana and others*** {1995 SCC (L&S) 248} the Supreme Court has held that the petitioner had received higher salary not on account of any mis-interpretation made by the petitioner but by wrong construction or calculation by other Officers for which the employee cannot be held to be at fault. It was further held that the amount paid till date may not be recovered from the employee. In the instant case, there may be some mis-calculations or wrong construction by the Officers of the Board for which the petitioner cannot be held responsible as he had not continued in service till 31.12.1993 on the basis of any mis-representation made by him.

12) In the case of ***Bhagwan Shukla, S/o Sarabjit Shukla Vs Union of India and others*** {1994 (6) Supreme Court Cases 154}, wherein the basic pay of the employee was reduced to Rs.181/- from Rs.190/- per month retrospectively w.e.f.18.12.1970; the Supreme Court held as under :-

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to

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law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter."

In the present case, no show cause notice affording an opportunity of hearing to the petitioner was issued before the impugned orders dated 29.01.1996, 05.02.1996 and 09.12.1997 were passed.

13) Accordingly, the petitioner is entitled to the same salary what he had received before the retirement and thereafter he is further entitled to the retiral benefits as admissible and payable to him in accordance with law.

14) For the reasons stated above, the petition succeeds and is allowed accordingly. However, the petitioner will not be entitled to any interest as the amount has in fact not been recovered from him but has been deducted from his pension and gratuity, provided the respondents make full payment of the deducted amount from pension and gratuity within a period of two months.

15) Under these circumstances, no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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